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CERTIFIED FOR PUBLICATION

NO CHANGE IN JUDGMENT

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SUBRAMANIAM BALASUBRAMANIAM, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B 123069 (Super. Ct. No. BC 158506) ORDER MODIFYING OPINION AND AND DENYING PETITION FOR REHEARING

THE COURT:

It is ordered that the opinion filed herein on January 25, 2000, be modified as follows:

1. On page 15, first sentence of the first full paragraph, insert "(*Elliott*)" after *University of Tennessee v. Elliott* (1986) 478 U.S. 788, so the sentence reads:

> Nor does *University of Tennessee v. Elliott* (1986) 478 U.S. 788 (*Elliott*) stand for the proposition that FEHA actions are not bound by prior state actions, as urged by the County.

2. On page 15, first full paragraph, the second sentence beginning with "That case did hold . . . ," is deleted through the end of the paragraph, and replaced with the following:

> In *Elliott*, a terminated employee of the University of Tennessee (University) requested a hearing under the Tennessee Uniform Administrative Procedures Act, and prior to the administrative hearing, filed a lawsuit for relief under title VII of the Civil Rights Act of 1964, 42 United States Code section 2000e, and 42 United States Code section 1983.
>
> The administrative law judge (ALJ), an administrative assistant to the University's vice-president for agriculture, held that he lacked jurisdiction to adjudicate the federal civil rights claims, but allowed the employee to present the affirmative defense that the charges against the employee were motivated by racial prejudice. The ALJ found that the University had proved that some, but not all, of the charges were racially motivated, and ordered the employee transferred to a new assignment. The University's vice-president for agriculture affirmed the ALJ's ruling.
>
> In affirming the Court of Appeals for the Sixth District, as to its ruling that the employee's title VII action could be tried *de novo* in federal court, the United States Supreme Court stated that "Congress did not intend unreviewed state administrative proceedings to have preclusive effect on Title VII claims." (*Elliott*, *supra*, 478 U.S. at p. 796.) It is to this statement that respondents pin their hopes on, analogizing title VII claims to FEHA claims. However, we conclude that respondents' argument does not avail them.
>
> The *Elliott* court reached its conclusion by relying on *Kremer v. Chemical Construction Corp.* (1982) 456 U.S. 461, which stated: "Since it is settled that decisions by the [Equal Employment

> Opportunity Commission] do not preclude a trial *de novo* in federal court, it is clear that unreviewed administrative determinations by state agencies also should not preclude such review *even if such a decision were to be afforded preclusive effect in a State's own courts*." (*Elliott, supra*, 478 U.S. at p. 793, second italics added.)
>
> As the emphasized clause in the preceding paragraph shows, *Elliott's* holding applies only to federal review. A state court may give preclusive effect to an unreviewed administrative determination.
>
> Moreover, in support of its holding that "Congress did not intend unreviewed state administrative proceedings to have preclusive effect on Title VII claims" (*Elliott, supra*, 478 U.S. at p. 796), the United States Supreme Court cited to *Alexander v. Gardner-Denver Co.* (1974) 415 U.S. 36, 48) as follows: "'[T]he legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes.'" (*Id.* at p. 796, fn. omitted.) Of utmost importance to Congress was the *individual's* pursuit of rights, which would be promoted in the instant case, by giving the Commission's ruling preclusive effect where the respondents did not seek review.

There is no change in the judgment.

Respondents' petition for rehearing is denied.